

**REMARKS**

Applicant respectfully requests reconsideration of the above-identified application in light of the foregoing amendments and the remarks that follow.

Claims 1, 5, 15 – 24, 30 – 41 and 43 – 55 are now pending, with Claims 1, 24 and 39 being the only independent claims. Claims 1, 5, 15-21, 24, 30-33, 36, 39, 43-46 and 49-53 have been amended and Claims 2-4, 6-14, 25-29 and 42 have been cancelled (without prejudice or disclaimer) to advance the prosecution of this application. No new matter has been added by the amendments to the claims. Entry of the amendments, and reconsideration of the application in light of these amendments and remarks are respectfully requested.

**I. EXAMINER INTERVIEW SUMMARY**

Applicant wishes to thank the Examiner for the time and courtesy extended to Applicant during the telephonic interview between the Examiner and the undersigned counsel on January 27, 2010.

Applicant respectfully submits this interview summary pursuant to 37 C.F.R. §1.133(b). During the course of the interview, the undersigned counsel discussed with the Examiner a possible amendment to the independent claims, which are reflected in this AMENDMENT and believed to be patentable over the prior art of record. No agreement was reached on the allowability of the amended claims as the Examiner wanted to reserve the opportunity to conduct further searching regarding the amended claims.

Applicant appreciates the Examiner's recommendation that another interview be scheduled following the filing of this AMENDMENT to provide the Examiner with the opportunity to conduct further searching, if believed necessary. To the extent that the Examiner is unable to

issue a notice of allowance, the undersigned counsel respectfully requests an interview to discuss the Examiner's views on allowance of the amended claims.

## **II. THE AMENDED CLAIMS ARE NON-OBVIOUS**

In the OFFICE ACTION, Claims 1 – 55 were rejected under 35 U.S.C. §103 as allegedly being obvious over Lange (US PG Pub 2002/0099640 A1) in view of Sloan *et al.* (US PG Pub 2003/0144936 A1). To advance the prosecution of this application, Applicant has amended independent Claims 1, 24 and 39, and respectfully submits that all of the pending claims are non-obvious over the cited prior art. Entry of the amendments, and reconsideration and withdrawal of the §103 rejections are respectfully requested.

Applicant's claims are directed to a system and computer-implemented method for managing a first entity's (*e.g.*, a client's) exposure to an economic risk associated with a commodity. Independent Claims 1, 24 and 39 have been amended to incorporate the limitations from dependent Claims 14, 29 and 42, respectively. Specifically, independent Claims 1, 24 and 39 now recite (a) receiving benchmark cash flow data agreed to by said first entity and a second entity; and (b) calculating payout data (representing payments to be made between the first entity and the second entity) based on a difference between said combined cash flow data and said benchmark cash flow data. No new matter has been added by the amendment to Claims 1, 24 and 39. Entry of the amendments is respectfully requested.

An example of the benchmark cash flow data agreed to by the first and second entities (*e.g.*, client and institution) and the calculated payout data (representing payments to be made between the first and second entities) based on the agreed to benchmark cash flow data is described in Applicant's Specification as follows:

A payout manager 9 is also included in system 1 and receives the tracking portfolio cash flows calculated by tracking portfolio generator 7. ***Payout manager 9 also receives from the client a benchmark that is a series of cash, flows that represents the client's desired financial objective in operating the client's portfolio.*** For example, in a gasfired power plant, the client's financial objective may be to achieve a set stream of cash flows from the plant despite the high variability and unpredictability of gas and electric prices. ***Payout manager 9 measures performance of the tracking portfolio against the benchmark and then calculates a payment to be made between the client and the financial institution based on the difference between the tracking portfolio cash flows and the benchmark cash flows.***

Referring now to FIG. 2, there is shown a graph depicting a payment stream between the financial institution and the client according to an exemplary embodiment. ***The graph in FIG. 2 reflects payments made pursuant to an agreement between the financial institution and the client that requires the financial institution to immunize the client from all differences between the benchmark and tracking portfolio cash flows.*** Thus, payout manager 9 generates a set of payments to be made to the client that compensates the client for low tracking portfolio cash flows. As indicated in FIG. 2, ***the agreement between the financial institution and the client also requires the client to pay to the financial institution any cash flows generated by the tracking portfolio in excess of the benchmark cash flows.***

(Specification, at Paragraphs [0055] – [0056]) (*emphasis added*).

Applicant respectfully submits that neither Lange nor Sloan *et al.* disclose or suggest receiving benchmark cash flow data agreed to by the first entity and a second entity; and calculating payout data (representing payments to be made between the first entity and the second entity) based on a difference between the combined cash flow data and the benchmark cash flow data. There is simply nothing in Lange or Sloan *et al.* that teaches or suggests a system or computer-implemented method for managing a first entity's exposure to an economic risk associated with a commodity, in which the first entity and a second entity agree to a benchmark (represented as benchmark cash flow data) that is used to calculate payments (represented as payout data) to be made between the first and second entities based on the difference between the combined cash flow data of the model and hedging portfolios and the benchmark cash flow data agreed to by the first and second entities.

Accordingly, Applicant respectfully submits that amended independent Claims 1, 24 and 39 and their dependent Claims 5, 15 – 23, 30 – 38, 40 – 41 and 43 – 55 are non-obvious over Lange nor Sloan *et al.* Entry of the amendments, and reconsideration and withdrawal of the §103 rejections are respectfully requested.

### CONCLUSION

For the reasons set forth above, Applicant respectfully submits that the amended claims are in condition for allowance. Prompt allowance of the claims is respectfully requested.

A petition and fee for a three month extension of time to respond to the OFFICE ACTION are being filed contemporaneously with this response.

To the extent that the Examiner is unable to issue a notice of allowance, the undersigned counsel respectfully requests an interview to discuss the Examiner's views on allowance of the application.

Respectfully submitted,

WEITZMAN LAW OFFICES, LLC

Dated: February 3, 2010

By: /Kenneth S. Weitzman/  
Kenneth S. Weitzman  
Reg. No. 36,306

Correspondence Address:

WEITZMAN LAW OFFICES, LLC  
425 Eagle Rock Avenue, Suite 102  
Roseland, New Jersey 07068  
Tel. (973) 403-9940  
Fax (973) 403-9944  
Email: kweitzman@weitzmanip.com